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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,276	08/26/2003	David J. Forshee	3243-000003	5508

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EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT PAPER NUMBER

3632

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/649,276	FORSHEE ET AL.	
	Examiner	Art Unit	
	Gwendolyn Baxter	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 9-12 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 13-15 is/are rejected.
- 7) ☒ Claim(s) 6 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |



This is the third office action for application serial number 10/649,276, Retainer for Immobilizing a Bucket during Mixing, filed on August 26, 2003.

Claim Rejections - 35 USC § 112

Claims 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 13, line 19, the phrase "such as liquid paint" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

In claim 13, line 16, "its" should be replaced by the proper noun to avoid any ambiguity.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,936,926 to Miller. The present invention reads on Miller as follows: Miller teaches a retainer comprising a retainer ring (16), and a laterally

Art Unit: 3632

outwardly extending generally flat wing (20). The retainer ring has a vertical axis which forms a cylindrically shaped socket into which the bucket or receptacle (18 or 19) may be placed with the ring has a forward portion diametrically opposite side portions and a rear portion. The laterally outwardly extending, generally flat wing formed on each of the opposite side portions of the ring. Each wing extending along that wing's respective ring side portion rearwardly of the ring a sufficient distance for supporting a foot of a user of the retainer which is positioned upon the wing so that the feet of the user are on opposite sides of the ring rear portion and the user's body is arranged upright and generally parallel to and spaced rearwardly of the vertical axis of the ring. The body of the user is generally rearwards of the rear portion of the ring whereby a mixer held by the user will extend substantially vertically downwardly approximately into the center of a bucket arranged within the ring. The ring has an interior circular shaped wall surface having upper and lower edges (near 17 and 16) which tapers downwardly and inwardly from the upper to the lower edges relative to the axis of the ring with the diameter of the upper edge being larger than the anticipated diameter of the bucket and the diameter of the lower edge. The diameter of the lower edge being smaller than the anticipated diameter of the bucket. The bucket or receptacle may contain material to be mixed is inserted in the socket so that the bucket engages and frictionally locks to portions of the inner surface of the wall. The user of the retainer may step upon the wings to firmly press the wings and thereby hold the retainer against a surface upon which the retainer may be positioned and to position the user generally over the bucket so that the user may insert and hold a mixing device in the bucket for mixing the material while

Art Unit: 3632

simultaneously holding the bucket against rotational or other movements that might otherwise have occurred if the bucket were free to move. The ring wall is formed of a resilient, plastic material, (see the cross hatching) which compresses radially inwardly against the bucket for frictionally gripping the bucket and holding the bucket against movement relative to the ring. The taper of the ring interior wall surface is formed with a taper of a slope angle, which frictionally locks the bucket to the wall surface to prevent the bucket from rotational or other movement during the mixing of material contained in the bucket. The wings is formed with flat upper surfaces upon which the user's feet may be positioned and with the lower surfaces upon which the user's feet may be positioned and with the lower surfaces of the wings having downwardly extending protuberances for engaging against a ground support surface upon which the retainer is positioned.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller.

Miller teaches the limitations of the base claim, excluding the interior wall surface being tapered to provide a taper of approximately 2 degrees and the opposite diametric ends provide an internal taper of approximately 4 degrees. It would have been obvious matter of design choice to modify the Miller reference by having the internal wall being

Art Unit: 3632

tapered approximately 2 degrees and the opposite end being tapered approximately 4 degrees, since applicant has not disclosed that having the lugs extend at this specific angle solves any stated problem or is for any particular purpose and it appears that the tapers would perform equally well with the taper being any acute angle.

Allowable Subject Matter

Claims 6 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7 and 9-12 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-7, 9-15 and 17 have been considered but are moot in view of the new grounds of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 571-272-6814. The examiner can normally be reached on Monday-Wednesday, 8:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski A Braun can be reached on 571-271-6788. The fax

Art Unit: 3632

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter
Primary Examiner
Art Unit 3632

September 19, 2005